

**DECREE No. 208/355 OF 12 JUNE 2018**

to lay down common rules applicable to contracts awarded by public undertakings.

**The President of the Republic,**

**Mindful** of the Constitution;

**Mindful** of Law No. 73/7 of 7 December 1973 relating to the preferential claim of the Treasury to safeguard public funds;

**Mindful** of Law No. 74/18 of 5 December 1974 concerning the control of authorising officers and vote holders of the State, of Local Authorities and of State undertakings, as amended by Law No. 76/4 of 8 July 1976;

**Mindful** of Law No. 2017/11 of 12 July 2017 on the General Rules and Regulations governing public undertakings;

**Mindful** of Decree No. 2001/048 of 23 February 2001 relating to the creation, organization and functioning of the Public Contracts Regulatory Agency, as amended and supplemented by Decree No. 2012/076 of 8 March 2012;

**Mindful** of Decree No. 92/408 of 9 December 2011 to organise the Government, as amended and supplemented by Decree No. 2018/190 of 2 March 2018,

**Hereby decrees as follows:**

**Chapter I**  
**General Provisions**

**Article 1:** This decree lays down the common rules applicable to the award and control of the execution of public contracts of public undertakings.

**Article 2:** Contracts awarded by public undertakings shall be based on the principles of competition, equity in the treatment of candidates, transparency and fair pricing.

**Article 3:** This decree shall apply to any public contract financed or co-financed by:

- a) the budget of a public undertaking;
- b) foreign, bilateral or multilateral aid funds;
- c) loans guaranteed by the State on behalf of a public undertaking.

**Article 4:** (1) Notwithstanding the provisions of article 3 above, provisions hereof may only apply to contracts concluded within the context of international agreements signed by the State where such provisions are not contrary to those of the said agreements.

(2) The provisions of this decree shall not apply to:

- a) services falling under purchase orders whose amount is set by a resolution from the Board of Directors considering the specificities of the undertaking;
- b) contracts meant for the acquisition or lease of developed or undeveloped land;
- c) the acquisition of petroleum products meant solely for the vehicles of the public undertaking concerned.

**Article 5:** Within the meaning of this Decree, the following definitions shall apply:

- a) **Independent auditor:** a renowned consultancy hired by the body in charge of the regulation of public contracts to conduct an annual audit of contracts;
- b) **Authority in charge of Public Contracts:** the authority at the head of the government body competent in the domain of public contracts;
- c) **Additional clause:** contractual document amending some clauses of the initial contract to adapt it to events occurring after the signature of the latter;
- d) **Contract Manager:** a natural person authorised by the project Owner to provide general administrative, financial, and technical assistance at the definition, preparation, implementation and acceptance phases of the services provided for in the contract;

Being in charge of the general management of the implementation of the services, they shall determine all the technical and financial provisions and shall represent the Project Owner before the competent dispute arbitration bodies;

- e) **Public undertaking's contracting partner:** any natural person or legal entity party to the contract, as well as their representative(s), staff, successor(s) and/or duly appointed representative(s), in charge of performing the services provided for in the contract;
- f) **Follow-up and Technical Acceptance Committee:** a committee consisting of members selected according to their area of expertise and responsible for the follow-up and approval of the work executed within the scope of contracts for intellectual services, whose ceilings are determined by the Board of Directors.
- g) **Internal Tenders Board:** technical support body placed under the authority of a Project Owner or a Delegated project Owner for the award of contracts;
- h) **Public undertaking:** economic unit with legal and financial autonomy, operating an industrial and/or commercial activity and whose capital is owned wholly or in majority by the State or a legal entity governed by public law;
- i) **Associated undertakings:** a group of businesses that have come together under a single undertaking and are represented by one of them acting as a common agent;
- j) **Contract Engineer:** a natural person or legal entity governed by public law, authorised by the Project Owner to follow up execution of the contract;

Being in charge of technical and financial follow-up, they shall examine, decide upon, and give instructions that have no financial implication. They shall report to the Contract Manager;

- k) **Project Manager:** a natural person or legal entity to whom the the Contracting Authority entrusts the duty of defending their interests during the definition, development, execution, and acceptance phases of the services covered by the contract;
- l) **Contracting Authority:** General Manager of a public corporation, representing the entity benefiting from the services provided for in the contract;
- m) **Contracting Authority's Representative:** person acting as proxy for the Contracting Authority and performing some of the duties of the latter.
- n) **Contract of a public corporation:** written agreement entered into, in accordance with the provisions of this decree, by which an entrepreneur, supplier, or service provider undertakes to either carry out work for, or supply goods or services within a given time-limit, for a price;
- o) **Contract amount:** amount, inclusive of taxes, of the expenses and payments for the services covered by the contract, subject to any additions or deductions that may be made under the terms of the said contract;
- p) **Structure:** any construction, installation, building, assembly and, generally, any material good created or transformed by the execution of works;
- q) **Work and Services:** any work, supplies, services or intellectual services to be provided or performed in accordance with the purpose of the contract;
- r) **Tenderers:** natural persons or legal entities that apply for a contract in an invitation to tender;
- s) **Sub-Committee for Evaluation:** Ad-hoc committee designated by the Internal Tenders Board for evaluation and classification of bids on the basis of technical and financial aspects.

## **Chapter II** **Public Contracts Management Bodies**

### **I. Board of Directors**

**Article 6:** (1) The Board of Directors shall have the broadest powers to act in all circumstances in the name of the public corporation.

(2) It shall ensure respect of the rules of competition, equity in the treatment of participants, transparency, and fair pricing in contract award procedures.

To this effect, it shall:

- issue an assent to proposals for contract award according to the limits which it shall set;
- approve the contract award plan proposed by Management;

- lay down the terms for the organisation and functioning of the Internal Tenders Board, the appointment of the chairperson, members, and secretary of the board, and the evaluation of bids;
- examine and give its opinion on requests for exceptional procedures tabled by the General Manager;
- commission audits or any other investigation to ensure respect of due process and the quality of the award procedure;
- receive and give an opinion on the annual contract award report prepared by the General Manager;
- penalise procedures that breach the regulations in force, as well as the authors thereof; to this effect, it shall receive all documents created within the framework of the award, execution, and follow-up of contracts;
- examine reports from follow-up missions conducted by the control bodies and order implementation of the measures arising therefrom;
- arbitrate in disagreements between the Contracting Authority: and the Internal Tenders Board;
- set up the Arbitration and Appeals Committee, tasked with hearing disputes and denouncements tabled by tenderers in the contract award phase, and any other case referred to it by the Board of Directors;
- grant express authorisations for the award of a contract following appropriate procedures and by mutual agreement;
- set the threshold of purchase orders, order letters, amendments, initial advance payments, subcontracting, and subsupply, and the ratio of contracts passed by mutual agreement.

(3) The Board of Directors may, where need be, delegate some of its prerogatives to the Chairperson of the Board of Directors.

**Article 7:** Notwithstanding the provisions of Article 6 above, the Chairperson of the Board of Directors shall exercise the following prerogatives:

- authorise, after the opinion of the Board of Directors, exceptional procedures;
- sign, alongside a Board Member, the instruments appointing the chairperson and members of the Internal Tenders Board;
- send copies of the instruments penalising irregular procedures and the authors thereof to the Authority in charge of Public Contracts and the body in charge of regulation.

## **II. Contracting Authority**

**Article 8:** (1) The Contracting Authority shall initiate and conduct contract award and implementation activities.

To this effect, it shall:

- carry out all the activities related to prerequisites for the award and execution of contracts;
- draft and update the contract award plan and forward a copy thereof to the Authority in charge of Public Contracts and the body in charge of regulation;
- prepare draft tender and consultation files and submit them to the Internal Tenders Board for examination;
- launch invitations to tender;
- award, publish results, sign and notify contracts, amendments;
- sign and notify instructions to the contractor;
- follow up the physical and financial execution of contracts;
- terminate contracts, where need be;
- seek prior approval from the Board of Directors for exceptional procedures.

(2) For each public corporation, the Contracting Authority may, where need be and after deliberations of the Board of Directors, delegate its duties as Contracting Authority to one or several officials of the corporation.

### **III. Internal Tenders Boards**

**Article 9:** The Internal Tenders Board shall be a technical support body placed under the authority of the Contracting Authority for the award of contracts.

As such, it shall:

- examine tender and consultation files prepared by the Contracting Authority;
- organise bid-opening sessions;
- appoint sub-committees to examine bids;
- make proposals to the Contracting Authority for the award of contracts;
- examine draft contracts and amendments.
- send the Contracting Authority a semi-annual report on its activities, with a copy to the Board of Directors, the Ministry in charge of public contracts, and the body in charge of regulation.

**Article 10:** The Internal Tenders Board within a public corporation shall be made up of a chairperson, 4 (four) members, and a secretary.

**Article 11:** (1) The chairperson, members, and secretary of the Internal Tenders Board shall be appointed by the Board of Directors. The chairperson should be a person from outside the public corporation concerned.

(2) The secretary of the Internal Tenders Board shall be appointed by the public corporation's Board of Directors from within the internal entity in charge of the administrative management of the public corporation's contracts.

(3) The chair and members of the Internal Tenders Board shall be appointed for a term of 2 (two) years, renewable once.

**Article 13:** The chairperson and members of Internal Tenders Boards shall be chosen from amongst persons of good moral standing with proven expertise in the area of public contracts, taking into account their place of residence.

**Article 14:** (1) The Internal Tenders Board shall convene at the invitation of its Chairperson, who shall specify the day, time, and venue of each meeting. On the proposal of the Contracting Authority, the agenda shall be adopted during the meeting.

(2) Invitations and the documents proposed by the Contracting Authority should reach members at least 48 (forty-eight) hours before the date of the meeting.

**Article 15:** (1) Meetings of the Board shall be valid only when held in the presence of its chairperson and at least half of the members.

(2) The decisions of the Board shall be passed by a simple majority of members present. In the event of a tie, the Chairperson shall have the casting vote.

**Article 16:** Where a project within a public corporation is jointly financed, a Special Tenders Board may be set up within the said project by a resolution from the Board of Directors, depending on the financing conditions. In this case, the instrument setting up the Board shall indicate the composition of thereof, which composition should take into account the specificities of the said project.

#### **IV. Internal Contract Management Entities**

**Article 17:** (1) The Board of Directors shall set up an internal entity for the administrative management of contracts, which shall be the main interface between the control bodies and the public corporation. It shall assist the Contracting Authority in the exercise of its duties, notably in the:

- a) preparation of drafts;
- b) drawing and following up of contract award plans;
- c) preparation of draft consultation files;
- d) acceptance of bids;
- e) finalisation of draft contracts and amendments;
- f) preparation of explanatory statements for drafts;
- g) centralisation and storing of all documents and data relating to the corporation's contracts;
- h) drafting of all necessary documents and the forwarding thereof to the Secretariat of the Tenders Board;
- i) review and implementation of the remarks of the Tenders Board on the contract documents;
- j) drafting of quarterly, semi-annual, and annual reports on the general situation of contracts awarded by the public corporation.

(2) The organisation and functioning of internal structures for administrative management of the contracts of public corporations shall be laid down by a resolution from the Board of Directors.

### **Chapter III** **Public Contracts Control Bodies**

#### **I. Internal Control**

**Article 18:** Internal control of the implementation of contracts awarded by public corporations shall be conducted by the Contracting Authority through the Contract Manager, the Contract Engineer and, where applicable, the Project Manager.

#### **II. External Control of Contract Execution**

**Article 19:** (1) External control of the implementation of contracts awarded by public corporations shall be conducted by the Ministry in charge of public contracts.

As such, the Ministry in charge of public contracts shall:

- with assistance from its relevant services, carry out routine and unannounced checks on the execution of ongoing contracts, notably with a view to ensuring that the terms of the contract and applicable standards are respected;
- Conduct checks upon completion to examine the performance of a structure or supply covered by a warranty.

(2) The Ministry in charge of public contracts shall send a copy of its periodic reports on the control of the execution of contracts awarded by the public corporation to the Board of Directors.

(3) The stakeholders involved shall send a copy of all documents generated by the execution of works to the Ministry in charge of public contracts, including:

- contracts and amendments signed and notified;
- instructions to the contractor, including those ordering the start of work;
- copies of progress and final estimates;
- work and technical acceptance reports;
- reports on the completion of technical and financial execution of projects;
- reports of project managers.

#### **III. REGULATION**

**Article 20:** (1) The body in charge of the regulation of public contracts, in accordance with its missions, shall regulate contract award procedures.

To this effect, it shall:

- ensure application of the regulations governing contracts awarded by public corporations;

- collect and store, for archival purposes, all documents pertaining to contracts awarded by public corporations;
- see to the building of the capacities of persons involved in the contracting processes of public corporations;
- publish instruments relating to the award and control of the execution of public contracts in the Public Contracts Journal;
- give, to the Board of Directors and each time the latter so requests, opinions on the appeals tabled by tenderers.

(2) Where irregularities that do not affect the rules of publicity and competitive bidding are observed, the body in charge of the regulation of public contracts shall, for educational purposes, send instruments laying down regulatory measures to persons involved in the contracting process for contracts awarded by public corporations.

**Article 21:** All documents created within the framework of the award, execution and control of contracts shall be forwarded to the body in charge of the regulation of public contracts for storage and archiving within 72 (seventy-two) hours of their signature.

**Article 22:** Contracts awarded by public corporations shall be audited after completion by an Independent Auditor hired through an invitation to tender by the body in charge of regulation.

#### **Chapter IV** **Prerequisites for Award of Public Contracts**

**Article 23:** (1) Before launching of any invitation for tender or consultation, the Contracting Authority shall ensure that there are preliminary studies and that the site, the funding, and the contract award plan are available.

- (1) The preliminary studies should take into account applicable technical, social, and environmental standards, in compliance with the laws and regulations in force;
- (2) Site availability shall involve the Contracting Authority taking all the necessary steps for effective release thereof beforehand;
- 3) The contract award plan schedules all the activities relating to the award and execution of contracts planned for the year concerned. It shall be drawn up by the Contracting Authority and approved by a resolution from the Board of Directors. A copy of the said plan shall be forwarded to the Ministry in charge of public contracts and to the body in charge of regulation;
- 4) Availability of funding shall start from the adoption of the budget to the release of the funds allocated to contracts.

#### **Chapter V**

## Types of Contracts

### I. Works Contracts

**Article 24:** Works contracts are contracts concluded with entrepreneurs for the construction, reconstruction, demolition, rehabilitation, renovation of any building or structure, including site preparation, earth-moving works, installation of equipment or materials, decoration and finishing, as well as ancillary services, where the cost of the latter is not higher than that of the works proper.

### II. Supply Contracts

**Article 25:** Supply contracts are contracts concluded with suppliers for the purchase, financial leasing, lease-purchase of products or materials, including services and accessories, where the cost of the latter is not higher than that of the goods proper.

### III. Service Contracts

**Article 26:** (1) Service contracts are contracts that are neither for works nor supplies, concluded with service providers for the provision of intangible services, the substance of which can be quantifiable or non-quantifiable.

(2) Contracts for quantifiable services are contracts for the provision of services that do not necessarily require a design. They translate into a physically measurable result. These include security, cleaning or upkeep of public buildings or green spaces, upkeep or maintenance of office or computer supplies and equipment, and insurance, excluding health insurance.

(3) Contracts for non-quantifiable services, other than intellectual services, are contracts for the provision of non-quantifiable services that do not necessarily require a design. These include health insurance, advertisement, financial auditing, organisation of training seminars.

(4) Contracts for intellectual services are contracts for non-quantifiable services meant for the provision of services that are mainly intellectual in nature.

### IV. Other Types of Contracts

#### IV.1. Framework Agreements

**Article 27:**(1) Where a Contracting Authority cannot determine beforehand the volume or pace of orders for routine supplies or services it needs, it may resort to a framework agreement.

(2) Framework agreements are contracts concluded by one or more Contracting Authorities with one or more service providers to lay down rules on purchase orders to be issued, or provisions to govern contract-based orders that may be passed subsequently within a given period, notably with regard to prices and, where applicable, the quantities envisaged.

(3) The term of framework agreements may not exceed 3 (three) years.

(4) Where a framework agreement is passed for a period exceeding 12 (twelve) months, and where the framework agreement expressly provides so, each of the contracting parties may request, at dates set by the parties, a revision of the prices in application of the price revision formula provided for therein, or to denounce the

contract, where application of the price revision formula would lead to a unit price change higher than 25%.

(5) Framework agreements may only be used for routine supplies or services, and maintenance and renovation works.

**Article 28:** (1) Where a framework agreement sets the minimum and maximum supplies or services, with a determined cost or quantity, that may be ordered over a given period that shall not exceed that for the use of relevant funds, the quantities of the services or supplies having been specified, the said agreement shall be executed progressively as purchase orders are issued.

(2) Orders are written requests sent to the holder of the framework agreement. They shall specify the services set out in the framework agreement, and whose execution is being requested, as well as the quantity requested.

(3) Where orders concern a given category of services or supplies, but do not specify the quantity or overall cost of the orders, the framework agreement shall give rise to subsequent, contract-based orders.

(4) Subsequent contract-based orders shall specify those characteristics and terms of execution of the services requested that are not set in the framework agreement. They may not give rise to substantial changes in the provisions of the framework agreement.

#### IV.2. Multi-Year or Multi-Phase Contracts

**Article 29:** (1) Where the all the funding required for the execution of a project cannot be mobilised during a single financial year, the services shall be spread over several financial years or executed in several phases, and the Contracting Authority shall schedule the expenditure related to each financial year or each phase.

(2) The contracts referred to in (1) above shall be subject to a single invitation to tender and shall specify the term for which they are concluded.

(3) Multi-year contracts that include a binding yearly phase and conditional yearly phases should specify the scope, amount, and terms for execution of the services falling under each phase.

(4) The services of each phase should form a coherent whole that takes into account services provided under previous phases, if any

(5) Contracts that include a binding phase and one or more conditional phases may include a clause for termination with prior notice to either party.

(6) The execution of each conditional phase shall be subject to instructions to the contractor, issued by the Contracting Authority and notified to the contracting partner under the terms set out in the contract.

#### IV.3. Reserved Contracts

**Article 30:** (1) Some contracts may be set aside for craftsmen, vulnerable persons, grass roots community organisations, and civil society organisations.

(2) The nature and threshold of the contracts referred to in (1) above, as well as the terms for their application, shall be determined by a resolution from the Board of Directors.

#### IV.4. Adapted Contracts

**Article 31:** (1) Where works, supplies, and services can only be obtained from businesses or services providers who must be chosen because of their particular speciality, knowledge, or aptitudes; or from patent holders, exclusive dealers, monopoly holders, or those with the expertise, the General Manager of the public corporation shall place an order for the works or services directly or purchase the supplies directly, at fair value, from the service providers concerned, on the basis of a contract.

(2) Upon reception of the service ordered for, the General Manager shall send a request for validation, for regularisation purposes, to the Chairman of the Board of Directors within 10 (ten) days.

(3) For works, supplies, and services other than those referred to in Article 30 above, but that are urgent in nature, the General Manager of the public corporation may, after consulting at least 3 (three) service providers by any means in writing, place the order directly to the candidate with the lowest bid for works and supplies, and the best bid for services and intellectual services. In such a case, the offer of the successful tenderer, the examination report, the award decision, and the draft contract shall be submitted to the Internal Tenders Board, which shall have 3 (three) days to give its opinion thereupon.

(4) The opinion of the Internal Tenders Board to which the file is referred should be stored in the file, for the purpose of subsequent audits by the Board of Directors or any other competent entity.

(5) At the end of every six-month period, a Control and Evaluation Committee set up by the Board of Directors shall audit the orders referred to in this Article.

(6) The Board of Directors shall issue a resolution laying down the terms for resorting to adapted contracts, as well as the specific award procedure of these types of contracts.

#### IV.5. Special Contracts

**Article 32:** (1) Special contracts shall be contracts, which do not meet, in full or in part, the conditions relating to contracts awarded through invitation to tender or by mutual agreement. They include, for the most part, contracts relating to national defence, security, and strategic interests of the State.

(2) The contracts referred to in (1) above include clauses that are secret, for security reasons and the strategic interests of the State, and shall therefore not be subject to examination by any public tenders boards provided for under this decree.

(3) The contracts referred to in (1) above shall concern only the purchase of equipment or supplies, and any services directly related to national defence, security, and the strategic interests of the State.

## **Chapter VI**

### **Contract Award Procedures**

**Article 33:** (1) Contracts issued by public corporations shall be subject to prior consultation and competitive bidding by interested participants.

(2) Consultations of public corporations shall not be open to natural persons or legal entities that:

- a) are winding up or are bankrupt;
- b) are subject to one of the exclusion orders or forfeitures provided for by the laws in force, both in the country and abroad;
- c) have not subscribed to the disclosure obligations provided for by the laws and regulations in force.

#### **I. Invitation to Tender**

**Article 34:** (1) An invitation to tender shall be the procedure by which a contract is awarded after a public invitation to competitive bidding.

(2) The criteria for selection of the successful bidder shall take into account:

- the price of works and services, reductions and variants proposed or the cost of their use;
- technical and functional value, in particular, the operating and maintenance conditions, as well as the potential lifespan of the structure produced or of the supplies and services concerned;
- the quality and professional capacity of participants;
- the implementation or delivery time.

((3) An invitation to tender may be valid only if, after complying with all the provisions of this decree, the relevant Internal Tenders Board receives at least one bid that is deemed admissible.

**Article 35:** An invitation to tender may be national or international, open or restricted, or with design competition.

**Article 36:** The invitation to tender shall be:

- national, when it is addressed to natural persons or legal entities domiciled or headquartered in Cameroon;
- international, when it is addressed to natural persons or legal entities domiciled or headquartered in or out of the country.

#### **I.1. Open Invitation to Tender**

##### **I.1.1. General Provisions**

**Article 37:** (1) An invitation to tender shall be referred to as open where the tender notice invites all interested candidates to submit their bids by a given date.

(2) The tender file shall, after publication of the notice, be made available to each participant who so requests, against payment of the relevant fees in accordance with the scale in force.

**Article 38:** The tender file shall be consistent, both in form and content, with the standard files in force; otherwise it shall be null and void.

**Article 39:** (1) The amount of the bid bond, which shall be a lump sum, may not exceed 2% of the provisional budget of the project.

(2) The validity of bid bonds should overrun by 30 (thirty) days that of the bids.

(3) Upon expiry of the time-limit referred to in (2) above, the bond shall cease to have any effect, even in the absence of a release order, except if the Contracting Authority has duly notified the contracting partner that the latter has not fulfilled all its obligations. In this case, the effectiveness of the bond may only be ended by a release order issued by the Contracting Authority.

### **I.1.2. Publicity and Tender Submission Deadline**

**Article 40:** (1) The tender notice should be widely publicised through publication in the Public Contracts Journal published by the body in charge of the regulation of public contracts.

(2) Other means of publicity, such as radio announcements, newspapers available in newsstands, and specialised newspapers, notice boards, and electronic means may only be used additionally.

**Article 41:** (1) The time-limit given to tenderers to submit tenders may not be less than 15 (fifteen) days. This time-limit, which shall run from the date of publication of the tender notice, shall be between 30 (thirty) to 60 (sixty) days for international invitations to tender.

(2) Where circumstances so require, the Contracting Authority may ask the Board of Directors to reduce the time-limits referred to in (1) above.

### **I.1.3. Details of Tender**

**Article 42:** (1) Any tenderer shall provide in their tender:

- documents giving useful information, the nature of which shall be specified in the tender file;
- an attestation of solvency;
- a clearance certificate from the competent authorities regarding the payment of taxes, duties, contributions, fees or deductions of any nature;
- a non-exclusion certificate attesting that the bidder is not subject to an exclusion order or any forfeiture provided for by the law in force;
- the bid bond, the terms and amount of which shall be indicated in the tender file, in accordance with the rate in force;
- the attestation of classification, where applicable.

### **I.1.4. Admissibility of Tenders**

**Article 43:** (1) Tenders shall be sent in a stamped and sealed envelope bearing the number and purpose of the invitation to tender. They shall bear neither a distinctive mark nor any clue as to the identity of the tenderer, otherwise they shall be rejected.

(2) In the case of contracts for studies, the technical and financial offers shall be put in two different sealed envelopes and submitted in a stamped and sealed outer envelope under the same conditions as stated above.

(3) The envelopes containing the tenders shall be submitted against acknowledgement of receipt at the place indicated in the tender notice.

(4) Upon receipt, the envelopes shall be assigned a number, marked with the date and time of submission, and entered by order of arrival in a special register issued by the body in charge of the regulation of public contracts. These envelopes shall remain sealed until the moment provided for their opening by the Internal Tenders Board.

(5) Only envelopes received under the conditions set out in (1), (2), (3), and (4) above may be opened.

(6) The tender-opening session shall start not later than 1 (one) hour after the deadline for the submission of tenders as specified in the tender file.

(7) Tenders arriving after the deadline for submission shall be inadmissible.

(8) The envelopes containing the tenders shall be opened by the Internal Tenders Board.

(9) The tender-opening session shall be public. It may be attended by tenderers who have submitted their tenders.

**Article 44:** (1) The offers made by tenderers shall comply with the provisions of the tender file, otherwise they will be rejected.

#### **I.1.5. Evaluation of Tenders and Award of Contracts**

**Article 45:** The tenders shall be opened by the Internal Tenders Board at the date and time specified in the tender notice.

**Article 46:** The Chairperson of the Internal Tenders Board shall set up a Sub-Committee for Evaluation, made up of representatives of the corporation and qualified experts in the field, to evaluate the bids. For the composition of this sub-committee, the Chairperson of the Internal Tenders Board may consult the directory of experts published each year by the Authority in charge of Public Contracts:.

**Article 47:** (1) The Sub-Committee for Evaluation shall be made up of at least 3 (three) and at most 5 (five) members, including the Chairperson and the rapporteur.

(2) It shall submit its evaluation report within the time-limit set by the Tenders Board. This time-limit may not exceed 7 (seven) days.

**Article 48:** (1) Where the tender file so provides, in addition to the basic offer, the tenderer may propose variants or reductions.

(2) In this case, the tender file should clearly specify how the variants and reductions shall be considered in the assessment of offers.

**Article 49:** Within the framework of the award of contracts for services or intellectual services, and where the consultation file expressly provides so, the references of the promoter or a technical official of a newly-created national Small- and Medium-sized Enterprise shall be used in place of those of the legal entity, where the latter does not yet have the required references.

**Article 50:** (1) Subject to respect of the conditions for the compliance of tenders:

- a) works and supply contracts shall be awarded to the tenderer whose bid is evaluated as the lowest and meets the technical and financial conditions required, on the basis of key and qualification criteria.
- b) contracts for intellectual services shall be awarded to the tenderer whose bid is evaluated as the best offer, on the basis of both technical and financial criteria.

(2) The award of any contract shall be materialised by a decision from the Contracting Authority, which shall be notified to the successful tenderer within 10 (ten) days of publication of the decision, where there is no appeal.

(3) Once the results awarding a contract are published by the Contracting Authority, tenderers whose bids were not selected shall be informed of the rejection thereof and invited to collect the said bids within fifteen 15 (fifteen) days, except for the copy meant for the body in charge of the regulation of public contracts. Tenders that are not withdrawn within this time-limit shall be destroyed, without any claims being lodged by the tenderer.

(4) Any decision by the Contracting Authority to award a public contract shall be published, including the value and deadline, in the Public Contracts Journal published by the organ in charge of the regulation of public contracts or in any other publication authorised to do so, within 3 (three) days as from the date of receipt of the proposal for award submitted by the Internal Tenders Board.

**Article 51:** (1) In the award of a contract either by invitation to tender or by mutual agreement, where offers are at parity, according to the evaluation criteria set out in the consultation file, priority shall be given to tenders submitted by:

- a) a natural person of Cameroonian nationality or a legal entity governed by Cameroon law;
- b) a natural person or legal entity having an economic activity on Cameroonian territory;
- c) a national small- and medium-sized enterprise whose shares are owned in majority by persons of Cameroonian nationality or governed by Cameroon law;
- d) associated undertakings involving Cameroonian firms or providing for substantial subcontracting to nationals.

(2) Where a contract involves, in whole or part, goods or services likely to be supplied by or sourced from a natural person or legal entity referred to in (1) above, the Contracting Authority or the Contracting Authority's Representative shall, prior to the competitive bidding, determine the said goods or services and mention them in the tender documents.

(3) Where prices or offers are at parity, priority shall be given to the tenderer in whose proposal the value of the part for the goods or services provided for in (2) above is the highest as compared to the parts contained in the other tenders.

(4) The margin of preference for national service providers at the financial level shall be 10% (ten percent) for works contracts and 15% (fifteen percent) for supply contracts, where technical offers are at parity.

(5) There shall be no preference for national service providers in intellectual services contracts.

**Article 52:** (1) A consultation may be declared unsuccessful in the following cases:

- no candidate participated in the consultation;
- none of the offers received complied with the consultation file;
- the amount of each offer received is higher than that of the provisional budget;
- the procedure followed does not comply with the regulations in force.

(2) Nevertheless, a consultation may only be declared unsuccessful following the opinion of the competent Internal Tenders Board.

(3) Any declaration of unsuccessful consultation shall be materialised by a decision published in accordance with the procedure and the time-limits provided for by this decree.

**Article 53:** (1) The Contracting Authority may cancel an invitation to tender without any claims being lodged by the tenderer. However, where the tenders have already been opened, this cancellation shall be subject to the approval of the Board of Directors.

(2) The General Manager may, after the approval of the Board of Directors, cancel their decision to award a contract as long as it has not been notified, without any claims being lodged by the tenderers.

**Article 54:** (1) In the case of an open invitation to tender, where the only admissible offer is judged technically and financially satisfactory, the Contracting Authority shall award the contract.

(2) An Internal Tenders Board may propose that the Contracting Authority reject abnormally low offers, provided that the tenderers concerned were invited to give justifications in writing and the said justifications were deemed not acceptable.

(3) The Contracting Authority shall be bound to state the reasons for the rejection of the bids to the concerned tenderers who so request.

(4) In any case, the Internal Tenders Board shall seek the opinion of the body in charge of regulation, which shall have not more than 5 (five) working days to give its opinion, before any abnormally low offer may be rejected.

**Article 55:** (1) Where there is a difference in opinion between the Internal Tenders Board and the General Manager, the latter shall request a second review while indicating his reservations within 3 (three) working days, as from the date of receipt of the proposal for award.

(2) After reviewing the said reservations, the Internal Tenders Board shall notify the General Manager of its reply within 5 (five) working days as from the date of receipt of the file.

(3) The General Manager shall inform the Internal Tenders Board of his/her final remarks concerning the file at the origin of the disagreement, within not more than 3 (three) days.

(4) Where the disagreement is unresolved, the file shall, at the request of the General Manager or of the Chairperson of the Internal Tenders Board, be submitted to the consideration of the Arbitration and Appeals Committee, which shall be made up of the following:

**Chairperson:** a person, from outside the corporation, of good moral standing with proven expertise in the area of public procurement;

**Members:**

- a representative of the ministry in charge of public contracts;
- a representative of the body in charge of the regulation of public contracts;
- a representative of civil society;

**A rapporteur**, appointed from amongst the staff of the internal entity in charge of managing contracts.

(5) A resolution from the Board of Directors shall lay down the composition of the Committee referred to in this Article.

(6) The chair and members of the Internal Arbitration and Appeals Committee shall be appointed by the Board of Directors for a term of 2 (two) years, renewable once.

**Article 56:** The other terms for the organisation and functioning of the Arbitration and Appeals Committee shall be set by the Board of Directors.

## 1.2. Restricted Invitation to Tender

**Article 57:** (1) A restricted invitation to tender shall be an invitation to tender preceded by a pre-qualification phase.

(2) A restricted invitation to tender shall be addressed exclusively to candidates selected after a pre-qualification procedure.

(3) Pre-qualification shall be conducted after a public call for applications published in authorised publications, a notice relating to a special invitation to tender, or a set of invitations to tender over a period in the same financial year, for services of the same nature, subject to the provisions of international agreements.

(4) The public call for applications shall specify the qualification criteria, notably: the conditions of contract, references concerning similar contracts, staff, installations, equipment, and financial situation.

(5) Upon publication of the public call for applications, interested candidates shall have to submit their files within 10 (ten) days, for national invitations to tender, and within 15 (fifteen) days for international invitations to tender.

(6) The pre-qualification report prepared by the Contracting Authority, accompanied by the draft Tender File including the proposed short list, shall be submitted to the Internal Tenders Board for examination not later than 15 (fifteen) days after the application deadline.

(7) The restricted invitation to tender shall serve as results of the pre-qualification phase. The approved tender files shall be made available to pre-qualified candidates under the same conditions as those set out in this decree.

(8) Letters of invitation to tender shall be sent to them by the Contracting Authority 48 (forty eight) hours after validation of the tender file by the Internal Tenders Board. The procedure shall then continue like that of an open invitation to tender.

(9) In any case, the time between the publication of the pre-qualification results and the launch of the invitation to tender may not exceed 2 (two) months.

**Article 58:** The restricted invitation to tender may be used in the following cases:

- intellectual services and other non-quantifiable services;
- specialised supplies and services;
- specific works or equipment of great importance or of a complex nature;

### I.3 Invitation to Tender with Design Competition

**Article 59:** (1) Where technical, aesthetic or financial reasons justify special studies, the invitation to tender may be accompanied by a design competition. The contest shall involve designing a structure or an architectural project.

(2) Invitations to tender that include a contest shall be implemented in accordance with the procedure for open or restricted invitations to tender.

(3) The Special Regulations of the Invitation to Tender with design competition should provide for:

- prizes, awards or benefits to be granted to the best placed tenderers;
- the conditions under which men of art, authors of projects shall be called upon to cooperate in the execution of their prize-winning project.
- the prize-winning projects to either become, in whole or part, the property of the Contracting Authority, or;
- the Contracting Authority to reserve the right to ask the contractor or supplier of his/her choice to execute all or part of the prize-winning projects, against payment of a fee set in the Special Regulations of the Invitation to Tender itself or determined subsequently by mutual agreement or following expert evaluation.

**Article 60:** The prizes, awards or benefits provided for in the consultation file shall be due to the winners upon publication of the results of the contest.

## **II. Procedure for Contracts by Mutual Agreement**

**Article 61:** (1) A contract shall be referred to as concluded by mutual agreement where it is passed without an invitation to tender, after the prior authorisation of the Board of Directors.

(2) Where an agreement is reached, the Contracting Authority shall directly consult, without any obligation of publicity, at least 3 (three) companies, except in the cases referred to in this decree.

(3) The consultation files, bids by the tenderers, as well as the authorisation to award by mutual agreement, shall be submitted for examination to the Tenders Board. The latter shall have 5 (seven) calendar days to state its proposal for award.

(4) In this case, the Contracting Authority shall have 30 (thirty) calendar days, as from the moment of obtaining the prior authorisation of the Board of Directors, to sign and notify the contract.

**Article 62:** A contract may only be awarded by mutual agreement in the specific cases listed below:

- a) for works, supplies, or services undertaken within the framework of research, studies, testing, experimentation or development which may only be entrusted to companies or service providers that must be chosen because of their particular speciality, knowledge, or aptitudes.
- b) for replacement of defaulting entrepreneurs or suppliers.
- c) for works, supplies, or services and intellectual services which, for reasons of extreme urgency caused by unforeseeable events, cannot be subjected to the time-limits of the procedure of an invitation to tender.
- d) for needs that can only be satisfied by a service requiring the use of a patent, a process, know-how, or of an entity in charge of the management and marketing of a licence or of exclusive rights held by a single entrepreneur, a single service provider, or a single supplier.

**Article 63:** (1) For the contracts referred to in Article 62 (a) and (d) above, the Contracting Authority shall consult a company and directly award the contract upon receiving authorisation from the Board of Directors.

(2) In this case, the draft contract accompanied by the authorisation to award by mutual agreement, the consultation file, and the bid of the successful tenderer shall be submitted to the Internal Tenders Board for its opinion.

(3) For the contracts referred to in Article 62(b) and (c), the Contracting Authority shall consult and select at least 3 (three) companies with similar references in the field concerned. The consultation file, bids by the tenderers, as well as the authorisation to award by mutual agreement, shall be submitted to the Internal Tenders Board for examination.

(4) In any case, the Board shall have 5 (five) days to give its opinion.

(5) The Contracting Authority shall have 15 (fifteen) calendar days, as from the moment of obtaining the prior authorisation of the Board of Directors, to sign and

notify the contract in the cases provided for in Article 62(a) a,d (d), and 30 (thirty) days for the other cases.

**Article 64:** In any case, and in accordance with the provisions of Article 62(b) and (d) of this decree, the successful tenderer shall imperatively provide an administrative file prior to the final award of the contract.

### **III. Simplified Procedures**

#### **III.1. Request for Quotes**

**Article 65:** The request for quotes shall be a simplified procedure for consulting service providers to award contracts which do not require an execution method and for which verification of compliance with the technical specifications does not require an assessment by the Sub-Committee for Evaluation.

**Article 66:** (1) Services that may be subject to a request for quotes shall concern:

- supplies, consumables, and other materials;
- furniture;
- tools and light equipment;
- computer equipment;
- light rolling stock or floating equipment.

(2) The Board of Directors shall specify other services which are eligible for the request for quotes.

**Article 67:** (1) The consultation shall be open to service providers operating in the sector concerned and who meet the qualification criteria indicated in the document for request for quotes.

(2) The request for quotes shall be prepared by the Contracting Authority, based on the standard document drawn up by the body in charge of the regulation of public contracts, and submitted to the Internal Tenders Board for review.

(3) Within 48 (forty-eight) hours following its signing by the Contracting Authority or the Contracting Authority's Representative, a copy of the consultation notice shall be forwarded to the body in charge of the regulation of public contracts for publication in the Public Contracts Journal and the website of the Ministry of Public Contracts, respectively.

(4) Publication may also be done by posting the notice in the premises of the Contracting Authority or publishing it in any other authorised magazine.

**Article 68:** (1) Price offers shall be established based on the technical description and the bill of quantities provided by the Contracting Authority.

(2) These offers shall be received by the Contracting Authority and forwarded to the competent Internal Tenders Board for opening, verification of compliance with technical specifications, and comparing.

(3) The Internal Tenders Board shall, during the meeting, propose award to the tenderer whose tender substantially meets the administrative requirements and technical specifications, and who offers the lowest price.

(4) The Contracting Authority shall decide on the award within 48 (forty-eight) hours and shall publish the result in the Public Contracts Journal and by posting.

(5) A copy of the decision for award shall be forwarded by the Contracting Authority to the body in charge of the regulation of public contracts, within 48 (forty-eight) hours of its signature.

**Article 69:** The Board of Directors shall set the maximum amount for services eligible for the request for quotes procedure, which amount shall not exceed 50,000,000 (fifty million) CFAF, unless otherwise specified by the Board of Directors.

### III.2. Recruitment of Individual Consultants

**Article 70:** (1) An Individual Consultant shall be a natural person recruited by the Contracting Authority to perform intellectual services or provide non-quantifiable services that do not absolutely require hiring a consultancy.

(2) The amount for services rendered by the Individual Consultant may not exceed 50,000,000 (fifty million) francs, unless otherwise specified by the Board of Directors.

(3) Individual consultants shall be needed for assignments which do not require teamwork or for which the expert's skills and qualifications are a major selection criterion.

(4) In the case where performance of the service requires a large number of experts such that it may be difficult to coordinate and manage their activities or define their collective responsibility, the Contracting Authority shall hire a consulting firm.

**Article 71:** (1) Individual consultants shall be selected based on their qualifications, taking into account the nature of assignment.

(2) To this effect, the consultants shall be selected by comparing the qualifications of candidates interested in the assignment following a request for expression of interest setting out the conditions for recruitment.

(3) To be selected, the consultants should have all the relevant minimum qualifications required to properly perform the assignment.

(4) The assessment of their abilities shall be based on their curricula vitae, certificates, professional experience, and their knowledge of the local context, if required.

(5) Upon publication of the public call for applications, interested candidates shall have a period of 10 (ten) days to file in their applications.

(6) The pre-qualification report ranking the candidates in order of merit shall be written by the Contracting Authority.

(7) This report and the draft contract shall be forwarded to the Internal Tenders Board for adoption not later than 15 (fifteen) days following the application deadline.

(8) Upon adoption of the pre-qualification report, the Contracting Authority shall forward the terms of reference of the assignment to the highest-ranked candidate and request the latter's financial offer to open negotiations.

(9) Where the negotiations are not successful, the Contracting Authority shall invite the next qualified candidate on the list for negotiations.

**Article 72:** (1) Individual consultants shall, by their very nature, be exempt from providing documents such as the trade register or a certificate of solvency.

(2) However, for national consultations, they shall provide an attestation certifying that they are not subject to an exclusion order or any forfeiture as concerns public contracts.

(3) A consultation assignment may not be entrusted to an Individual Consultant who may be in a situation of conflict of interest.

## **Chapter VII** **Management of Appeals**

**Article 73:** Any candidate who feels cheated in the contract award procedure may file an appeal:

- a) between the date of publication of the consultation notice, including the candidate pre-qualification phase, and that of the opening of bids;
- b) during the opening of bids;
- c) between the date of publication of results and that of notification of the award.

**Article 74:** Between the date of publication of the consultation notice, including the candidate pre-qualification phase, and that of the opening of bids:

- a) The appeal shall be sent to the General Manager with a copy to the Chairperson of the Board of Directors;
- b) It should reach the General Manager not later than 7 (seven) days prior to the opening of bids;
- c) The General Manager shall have 3 (three) days to reply. A copy of this reply shall be forwarded to the Chairperson of the Board of Directors;
- d) If the appellant is not satisfied, he/she may refer the matter to the Chairperson of the Board of Directors. The appeal shall not have a suspensive effect.

**Article 75:** During the opening of bids, the appeal shall affect only the unfolding of this step, notably the respect of procedures and the regularity of the documents verified.

- a) The appeal should be sent to the Arbitration and Appeals Committee with a copy to the Board of Directors and the General Manager;
- b) It should be received within a maximum of 3 (three) working days after the opening of the bids; it shall not have a suspensive effect.

- c) Where the tenders are opened in two stages, denunciations and appeals shall be validly submitted within 5 (five) days as from the date of opening of the financial offers.

**Article 76:** Between the time of publication of results and that of notification of the award, appeals may only concern the award:

- a) The appeal should be sent to the Arbitration and Appeals Committee with a copy to the Board of Directors and the General Manager;
- b) It should be received within a maximum of 5 (five) working days after publication of results;
- c) This appeal shall lead to suspension of the procedure.

**Article 77:** Upon receipt of the appeal, the Arbitration and Appeals Committee shall give its opinion within a maximum of 7 (seven) working days.

**Article 78:** The opinions of the Arbitration and Appeals Committee, duly adopted by the Board of Directors, shall be binding on all the parties concerned.

**Article 79:** In any case, the Board of Directors shall have 15 (fifteen) days, including the period of investigation of the appeal by the Arbitration Committee, to give its decision.

**Article 80:** After publication of results of the consultation, the minutes of the award meeting, to which the tender evaluation report shall be attached, shall be communicated to any interested tenderer who shall so request from the General Manager of the public corporation.

**Article 81:** The composition of the Arbitration and Appeals Committee shall be determined by a resolution of the Chairperson of the Board of Directors.

## **Chapter VIII** **Execution of Contracts**

### **I. General Provisions**

**Article 82:** (1) Any contract shall be subject to a single document written out on both sides of the paper, to which the contract documents shall be attached.

(2) Every contract shall be published, notified, and the Notice to Proceed issued to the contracting partner before the start of contract execution.

(3) Any claim concerning work for which the Notice to Proceed was not issued before the start of contract execution shall be inadmissible.

(4) An initial advance payment, whose amount shall be capped at 20% for works and supply contracts, and 30% for supply contracts, may be granted to the contractor upon request, provided that contractor meets all the required conditions and guarantees.

**Article 83:** All the other rules applicable to the performance of the contracts of public companies shall be those provided in the General Conditions of Contract in force and subsequent regulations.

## **II. Contents of Contracts**

**Article 84:** (1) Each contract shall contain the following information at least:

- purpose and number of contract;
- means of funding the expenditure and the budgetary charge;
- parties to the contract;
- the Contracting Authority, contract manager and the contract engineer;
- justification of the capacity of the person signing the contract and that of the contracting partner;
- list, by order of priority, of documents making up the contract, including especially: the bid or commitment document, special conditions of contract, estimate or detailed estimate, the schedule of unit prices, the detailed breakdown of unit prices, and the general conditions of contract to which it is specifically subject;
- contract amount, accompanied by the conditions for its determination, as well as those for its review, if any;
- tax and customs obligations;
- time-limit and place of execution;
- conditions for putting up bonds
- notification date;
- bank details of the public corporation's contracting partner;
- conditions for acceptance or delivery of services;
- terms of payment for services;
- accounting officer in charge of payment;
- terms for settling disputes;
- terms for termination, and;
- the competent jurisdiction in the case of an international invitation to tender.

(2) The drafting or formatting of all the contract documents shall be the responsibility of the Contracting Authority and, where applicable, the Project Manager.

(3) The final contract shall in no case amend the scope and nature of the services provided for in the invitation to tender. Only minor adjustments, with no financial or technical impact on the selected tender, may be accepted.

## **III. Amendments during Contract Execution**

**Article 85:** (1) The provisions of a contract may be changed only through an amendment.

(2) The amendment shall be adopted and notified based on the same review procedure as the initial contract. It shall amend neither the purpose, the holder of the contract, the payment currency, nor the provision for price revision.

(3) Instructions to the contractor relating to prices, deadlines and schedules are contract instruments used to manage a contract and may only be issued under the following conditions:

- where an instruction to the contractor is likely to cause overrun of the contract amount, its signing shall be subject to presentation of proof of availability of funds;
- where the contract amount shall be exceeded by a maximum of 20% (twenty percent), the contract may be modified by way of instructions to the contractor and regularised by amendment, subject to the provisions of (2) above;
- where the contract amount shall be exceeded by more than 20% (twenty percent), the modifications may only be made after signing the amendment related thereto.

(4) The total amount of amendments shall be capped at 30% (thirty percent) of the initial contract amount.

(5) Where the total amount of amendments due under a contract may exceed the 30% threshold referred to in (5) above, the contract shall be terminated and a new contract which includes all the new information on the services shall be awarded.

(6) In any case, any changes made to the technical specifications shall be subject to a preliminary study on the scope, cost, and time-limit of the contract.

#### **IV. Subcontracting and Subsupplies**

**Article 86:** (1) A contract may be subcontracted or give rise to subsupplies in accordance with the terms and conditions set out in the general conditions of contract.

(2) In the case of subcontracting, the total amount of the services concerned may not exceed 50% of the contract amount.

(3) Sub-contracts shall be agreements whereby the contract holder assigns the execution of part of the said contract to third parties.

(4) Subsupplies shall be purchase orders placed to third-parties by the contract holder to:

- either manufacture items or intermediate materials to be included in the service;
- or carry out some activities on which performance of this service depends.

**Article 87:** (1) Resorting to sub-contractors or subsuppliers shall be subject to the prior authorisation of the Contracting Authority.

(2) Notwithstanding the use of sub-contracting or subsupplies, the public corporation's contracting partner shall remain liable for the performance of all the obligations arising from the contract.

## **V. Co-Contracting**

**Article 88:** (1) There shall be co-contracting when the services covered by a contract are carried out by separate companies within the framework of associated undertakings. In event of co-contracting, the tender document shall specify the terms thereof.

(2) The special conditions of contract shall specify whether the companies involved in associated undertakings are jointly or severally liable.

(3) Companies in associated undertakings shall be jointly liable where each of them is committed to the whole contract and must make up for any failure by its partners. One of them shall thus be designated in the special conditions of contract as the agent and shall represent all the companies vis-à-vis the Contracting Authority. The contracting partners shall share the sums paid into a single account by the public corporation.

(4) Companies in associated undertakings shall be severally liable where the services are divided into parts, each of which is assigned to one of the companies, and each of them is committed to the share(s) assigned to them in the associated undertaking agreement. One of them shall be designated in the special conditions of contract as the agent, and the latter shall be jointly liable with each of the other companies in the contractual obligations towards the Contracting Authority.

(5) The agent shall represent all the companies of the joint venture vis-à-vis the Contracting Authority, for the purposes of execution of the contract. Each company shall be paid by the public corporation into its own account.

## **VI. Guarantees**

**Article 89:** Any contract holder shall provide:

- a) a bond guaranteeing the full execution of the contract, hereinafter referred to as the “final bond”;
- b) a bond guaranteeing, where appropriate, the proper execution of the contract and the recovery of the sums for which he shall be liable under the terms of the contract, hereinafter referred to as the “performance bond”.

**Article 90:** (1) The final bond may not be less than 2% (two percent) or higher than 5% (five percent) of the initial contract amount, plus any amounts that may arise from amendments.

(2) The performance bond shall be collected where the contract includes a warranty or maintenance period. It may not be higher than 10% (ten percent) of the initial contract amount, plus any amounts that may arise from amendments.

(3) The contract holder may replace the performance bond with a bond of the corresponding amount referred to as “proper performance bond” which shall be put up prior to the payment of each instalment.

(4) The performance bond shall not be required for contracts for intellectual services.

**Article 91:** (1) The final bond shall be put up within 20 (twenty) calendar days following contract notification and, in any case, before the first payment.

(2) The validity period of the final bond shall cover the period from contract execution until provisional acceptance;

(3) The validity period of the performance bond shall cover the warranty or maintenance period indicated in the contract until final acceptance;

(4) The terms and date for refund of bonds shall be set out in the general conditions of contract, subject to provisions otherwise that may be laid down in the special conditions of contract.

**Article 92:** (1) The bond may be replaced by the guarantee of a deposit issued by an accredited bank in accordance with the laws in force and issued to the benefit of the Contracting Authority, or by a personal and several guarantee.

(2) Contract holders shall provide guarantees from accredited financial bodies which have received authorisations from the Minister of Finance or which have a local correspondent who has received such authorisation.

(3) In place of a bond, small- and medium-sized enterprises owned and managed by nationals, as well as civil society organisations, may issue either a certified cheque, a bank cheque, a legal mortgage or a guarantee issued by a bank or an accredited financial institution in accordance with the laws in force.

(4) Any institution that issues a personal and several guarantee or any bank referred to in (1) above, shall undertake to pay, at the request of the Contracting Authority and up to the amount guaranteed, the sums for which the contracting partner of the public corporation may be liable under terms of the contract.

(5) The provisions of (1), (2), and (3) above shall be implemented in accordance with the rules set out by the Contracting Authority.

**Article 93:** (1) Once the public corporation's contracting partner has fulfilled its contractual obligations:

a) the final bond shall be refunded following a release order issued by the Contracting Authority upon final acceptance of work, where the contract does not specify any warranty period, or as from the provisional acceptance, where the contract makes provision for such a period;

b) the performance bond shall be released following a release order issued by the Contracting Authority or after final acceptance of work, following the expiry of the warranty period.

(2) Upon the expiry of thirty (30) calendar days, the competent body shall be required to either reimburse the bonds or release the performance bond mentioned in (1) above, at the request of the contracting partner of the public corporation.

(3) Upon the expiry of the period referred to above, the bonds shall cease to have any effect, even in the absence of the release order, except if the Contracting Authority has duly notified the public corporation's contracting partner that they have not honoured all their obligations.

(4) In this case, the effectiveness of the bond may only be ended by a release order issued by the Contracting Authority.

**Article 94:** The bearers of an order letter may be exempted from the obligation of providing the guarantees provided for under this decree.

**Article 95:** (1) For multiple-phase contracts, the final bond for each phase shall be put up within 20 (twenty) days following receipt of the Notice to Proceed with the phase concerned.

(2) The contract registration and bond shall be done in instalments.

## **VII. Security**

**Article 96:** (1) Any contract awarded by a public corporation may be used as security, subject to any form of transfer of claim.

(2) In this case, the security shall be in the form of a bilateral contract between the public corporation's contracting partner and a third party called "secured creditor".

(3) The secured creditor shall notify in writing or shall serve the Contracting Authority or the accounting officer in charge of payment with a certified true copy of the original security document.

(4) From the date of notification or service referred to in (3) above, and except for where payments are not possible, the accounting officer in charge of payment shall pay directly to the secured creditor the amount of the claim or the part thereof given to the said creditor as security.

(5) Where the security is put up to the benefit of several creditors, each of them shall receive the percentage of the claim assigned to them in the document, the indications of which shall be notified or served to the accounting officer in charge of payment.

(6) No modification in the designation of the accounting officer in charge of payment, or in the terms and conditions of payment, except, in the latter case, with the written approval of the secured creditor, shall be made after notification or service of the security.

(7) The release order for the notifications or service of the security shall be given in writing by the secured creditor to the accounting officer in charge of payment, which creditor should be the holder of the security document provided for in (3) above. It shall expire as from the second working day following that of reception by the accounting officer in charge of payment of the document informing the said accountant accordingly.

(8) Only preferential claims provided for by laws or regulations in force shall take precedence over the rights of secured or subrogated creditors.

## **VIII. Amounts of Public Contracts**

### **VIII.1. Characteristics of Amount**

**Article 97:** (1) The contract amount shall be remuneration to the contracting partner of the public corporation.

(2) The goods and services covered by the contract shall be paid for either through all-in rates applied to all or part of the contract, whatever the quantities, or through unit rates applied to the effectively executed quantities:

- a) a all-in rate shall be any amount received by the contract holder in consideration for all of the goods or services, of a structure, or part of a structure as defined in the contract;

An all-in rate shall be imposed once all the goods or services are well defined during the conclusion of the contract;

- b) a unit rate shall be the any amount that applies for component of a good or service, of a type or a component of a structure, the quantities of which are indicated in the contract solely as estimates.

(3) Whether the amount is an all-in or unit rate, it shall be firm where it cannot be modified because of foreseeable economic changes during the execution period.

(4) In any case contrary to the provisions of (3) above, the amount shall be revisable.

#### VIII.2. Change in Contract Amount

**Article 98:** (1) The introduction of a price revision clause in a contract shall not be systematic; prices concluded should be firm, wherever possible.

(2) Any Contract whose execution period does not exceed 12 (twelve) months may not be subject to a price revision.

(3) The amount price of goods and services shall be revisable where the contract provides for the modification of the initial amount as execution progresses.

(4) Subject to an express waiver and by mutual agreement between the Contracting Authority and the contract holder, the contract amount may be updated after a period of at least 6 (six) months between the date of the bid-opening and the date of notification of the contract award.

- a. This update shall consist in an overall review of prices based on a formula stipulated in the conditions of contract in order to factor in changes in economic conditions between the date on which the prices in the bid were set, which is also the date of bid-opening, and the contractually agreed start date. It shall be applied only once after the beginning of service delivery, in case of delays in the performance of the contract or in case of an extension of the contract period for reasons not attributable to the contract holder.
- b. Where the price update is due to an overrun of the deadline not attributable to the contractor, it shall only apply to the remaining goods and services to be delivered.
- c. Only fixed-price contracts may be updated. However, in case of overrun of the 6 (six) months period mentioned above, the Contracting Authority shall assess the outlook of economic conditions and inform tenderers if the prices may be updated or not, and ask those wishing to pursue the bidding process to extend the validity of the bids with or without updates. Where prices can be updated, the Contracting Authority, for all contracts within its jurisdiction, shall seek the prior opinion of the Board of Directors on the formula and terms for calculation to be communicated to the tenderers.
- d. For contracts with conditional phases of a total duration of more than 12 (twelve) months, the Contracting Authority shall specify in the general

conditions of contract whether they may be updated or reviewed, and shall determine the formula and terms for calculation, subject to the opinion of the Board of Directors. In case of any update, this shall be done only once on the global amount of the phases concerned by the update conducted between the notification date of the initial contract and the Notice to Proceed with execution of the phase concerned.

- e. When the extension of the contract implementation period, not attributable to the contractor, leads to an update, the formula and terms for the update shall be examined and adopted by the competent Tenders Board within the framework of the procedure for adoption of the related amendment. In addition, prices shall be updated for contracts with an initial execution period of not more than 6 (six) months and a total duration of more than 12 (twelve) months, or for those with an initial execution period of more than 6 (six) months and a total duration of more than 18 (eighteen) months.
- f. The updating formula should not include an adjustment margin. It should however set an update threshold.
- g. The update shall be applicable to prices of the initial contract and not to new prices. Nevertheless, if new prices are set based on a breakdown of all-in rates or a detailed breakdown of prices contained in the initial contract and on the basis of initial economic conditions, these new prices shall be updated.
- h. The normal price updating process consistent with contract clauses shall not give rise to an amendment. However, the Contracting Authority should include a provision to cover such expenses. Even though it is calculated before the commencement of activities, payment arising from the update shall be made progressively and depending on goods and services effectively delivered. It shall be done by separate tallies, first by tallies and attachments for the remuneration of effectively delivered goods and services as stipulated in the detailed contract estimate, and secondly by decision for remuneration of the statement of amounts due.
- i. A deadline extension for reasons attributable to the contract holder shall be deducted from the deadline to be considered for the calculation of the update.
- j. A fixed-price contract may be updated where the deadline of the initial contract is exceeded by more than two months for reasons not attributable to the contract holder.

(5) A contract may either be revised, or updated under the terms set out in (3) and (4) above.

(6) Price revision consists in reassessing the amount of goods and services delivered based on a contractually agreed formula, to factor in changes in economic conditions between the date on which the prices in the bid were set and that of delivery of the services over the period under consideration. It shall be applied to each breakdown issued by the contracting partner of the public corporation.

(7) Price adjustment shall be a type of price revision recommended for goods and service and specifically for goods and services whose value changes based on set benchmarks or a State commodity price list, or even the contractors' pricing list. This

technique shall involve calculating the value at the time of payment based on the benchmark provided for and set out in the contract A hedge or safeguard clause shall be mandatory for contracts that use this technique.

(8) The revision and update threshold: The revision and update threshold represents the percentage difference below which no revision or update shall be applicable. For contracts with revisable prices, it should be higher than or equal to the adjustment margin.

(9) The adjustment margin is the share of the price variation increase which shall be covered by the contract holder, or decrease, which the contractor will inversely benefit from; the adjusted margin shall always be lower than or equal to the revision threshold; it should be deducted from the overall variation observed in the application of the price revision formula.

(10) The safeguard clause shall be used where the Contracting Authority deems that a rise in prices may cause an overrun of the limits of the available budget. In this case, provision should be made for a safeguard clause offering the possibility, as soon as the new price or cumulative amount of the revision exceeds a rate set out in the contract, to either: terminate the uncompleted part of the contract without compensation, or; modify the initial price variation formula per amendment; or renegotiate lower prices. This rate shall be capped at 25% (twenty-five percent) of the amount of the initial contract, unless where there is a special dispensation from the Authority in charge of Public Contracts. The contrary of the safeguard clause is the escape clause which states the lowest level of the variation.

(11) An index shall be a number which indicates a periodically measured value whose variation over time helps to revise or update the price of a public contract.

The revision or update of prices in keeping with contract clauses shall not give rise to amendments.

### VIII.3. Conditions for Revising or Updating Contract Amounts

**Article 99:** (1) The conditions for revising and updating prices shall be clearly stipulated in the initial contract.

(2) Any contract with revisable price should include:

- a) a single price revision formula applicable on all goods or services;
- b) either several complete, independent formulas, each one of them applicable to a good or service whose price is separate in the contract;
- c) or a formula by currency of payment, if there are several, using the indexes of the country of origin of the inputs.

(3) The revision formulas must include a fixed part equal at least to 0.15 (zero point one five).

(4) The revision threshold shall be the percentage from which a change in the overall contract amount shall give rise to a price review.

(5) The adjustment margin shall be the share of the increase that shall be borne, in any case, by the contractor, or of the decrease which, inversely, shall to the contractor's benefit.

(6) The adjustment margin shall always be lower than or equal to the revision threshold.

(7) The adjustment margin shall be deducted from the revision coefficient.

(8) The revision coefficient shall apply to:

a) Goods and services delivered during the month; any deductions to work conducted under State control, to allowances and reimbursement of advance payments on the revised amount;

b) penalties;

c) Interest on overdue payments.

(9) It shall be forbidden to introduce a price revision clause by way of amendment into a contract awarded on the basis of a firm price.

(10) Where a contract includes a price revision clause, it should specify the date of establishment of the initial price, as well as the terms for revision of the said price.

(11) The updating formula drawn up in accordance with this Article shall not include an adjustment margin.

(12) Prior to any payment, the body in charge of the regulation of public contracts shall, in collaboration with the Contracting Authority and the other government institutions concerned, audit the statements of amounts due resulting from the revision and updating of prices duly approved by the Contract Engineer and the Contract Manager.

It shall have 15 (fifteen) working days to give its opinion upon receiving the file.

(13) In any case, price revision or updating shall be capped at 25% (twenty five percent) of the contract amount; otherwise the contract shall be terminated, except where there is a special dispensation by the Chairperson of the Board of Directors.

(14) Nevertheless, where the two parties do not wish to terminate the contract, they may either agree to execute the contract in full to amount of this threshold, or to change the price updating formula through an amendment to comply with the threshold defined above, or to open negotiations to set new, reduced prices.

## **Chapter IX**

### **Sanctions against Breach of Regulations**

**Article 100:** (1) Persons who breach the principles of competition, equity in the treatment of applicants, transparency in procedures, and fair pricing set out in this decree and other instruments applicable to public contracts issued by public corporations shall be liable to sanctions provided for by the laws in force; especially those concerning the rights of the Treasury to safeguard public funds, the auditing of authorising officers, administrators and managers of public funds and State-owned

companies, without prejudice to the annulment of the said contracts, as well as any disciplinary and legal proceedings.

(2) Any breach of the provisions of this decree shall be considered as misappropriation of public funds and shall be penalised in accordance with the laws in force.

**Article 101:** Procedures established in breach of the rules of fair competition, equity in the treatment of applicants, transparency, and fair pricing in contracts shall give rise to the following sanctions decided by the Board Chair without prejudice to the sanctions stipulated under the laws and regulations in force:

- cancellation of the procedure;
- re-run of the procedure;
- suspension of the procedure.

Perpetrators of such violations shall be liable to the following sanctions, to be taken by a resolution of the Board of Directors:

- suspension of the Contracting Authority's power to award contracts for a duration of not more than 24 (twenty four) months. As a consequence, the Board of Directors shall designate an official within the company to assume the role of the Contracting Authority during the period of suspension;
- disqualification from occupying the office of Chairperson, member and secretary within Public Tenders Boards;
- banning of the chairperson, members and rapporteurs of Sub-Committees for Evaluation of bids from taking part in public contract awarding activities;
- banning of companies from applying for public contracts for a period of not more than 24 (twenty four) months.

In any case, a copy of every sanctioning decision shall be forwarded to the Authority in charge of public contracts, the body in charge of the regulation of public contracts, and the Contracting Authority involved.

**Article 102:** (1) Any natural person or legal entity governed by public or private law, in charge of controlling the execution of public contracts, found guilty of misappropriation or wrongdoing in the exercise of the said control duties, shall be liable to sanctions provided for by the laws and regulations in force, without prejudice to payment for damages suffered by the Contracting Authority.

(2) When the accused person is a member of the staff of the the public corporation concerned, they shall be liable, through a decision from the Contracting Authority, to a ban from overseeing the execution of contracts within the said company for 3 (three) years counting from the date the wrongdoing was reported.

(3) If the accused person does not work within the services of the Contracting Authority, they may, by decision of the Authority in charge of Public Contracts, be liable to a ban from overseeing the execution of contracts for a period of 3 (three) years counting from the date the wrongdoing was noticed.

**Article 103:** (1) The Project Manager or any overseer of the procedures for the award or execution of a contract shall be liable in case of complicity. Complicity shall involve:

- a) omission or negligence to conduct controls or to give the prescribed technical opinion;
- b) voluntary failure to report to the Contracting Authority any irregularities related to violations noticed in the course of their work.

(2) This liability may arise in the following cases:

- a) any false statement or confirmation of information on the situation of the public corporation under one's surveillance, evaluation or supervision;
- b) receiving undue benefits or benefits liable to compromise the credibility or neutrality of the overseer;
- c) suspicious transactions with the entity under one's surveillance, in breach of the legal or regulatory in force regarding incompatibilities.

**Article 104:** (1) Chairpersons, members and secretaries of Tenders Boards of public corporations, and of Sub-Committees for Evaluation of bids shall be bound by the duty of professional secrecy.

(2) They shall be liable to sanctions provided for by the laws and regulations in force, without prejudice to their exclusion from the Internal Tenders Board by the Chairperson of the Board of Directors of the public corporation concerned.

**Article 105:** (1) Any natural person or legal entity governed by public or private law, in charge of controlling the execution of public contracts, found guilty of misappropriation or wrongdoing in the exercise of the said control duties, shall be liable to sanctions provided for by the laws and regulations in force, without prejudice to payment for damages suffered by the Contracting Authority.

(2) When the accused person is a member of the staff of the the public corporation concerned, they shall be liable, through a decision from the Contracting Authority, to a ban from overseeing the execution of contracts within the said company for 3 (three) years counting from the date the wrongdoing was reported.

(3) If the accused person does not work within the services of the Contracting Authority, they may, by decision of the Authority in charge of Public Contracts, be liable to a ban from overseeing the execution of contracts for a period of 3 (three) years counting from the date the wrongdoing was noticed.

(4) Similarly, any company found guilty of fraudulent manoeuvres in the contract award or execution phase shall be liable to exclusion from public procurement for 2 (two) years, on the decision of the Authority in charge of Public Contracts.

**Article 106:** The Board of Directors and members thereof may be held liable in the following instances:

- omission, abstention, negligence or any shortcoming in the discharge of their contract supervision duties, leading to harmful consequences for the company;

- actions in breach of the principles of free access to public procurement, equity in the treatment of applicants, transparency in procedures, fair pricing, and governance in the issuance, award, and execution of the company's contracts.

## **Chapter X** **Sundry, Transitional, and Final Provisions**

**Article 107:** Contracts awarded by public companies shall be subject to follow-up and periodic controls by the Ministry in charge of Public Contracts to assess the quality of contract award and execution procedures. A copy of the control report shall be sent to the Tenders Board of the public corporation, as well as to the competent authorities for analysis.

**Article 108:** The oversight exercised by the Ministry in charge of public contracts shall be carried out on the basis of consultation documents and signed contracts.

**Article 109:** The Authority in charge of public contracts may as a safety measure, decide to ban any contracting partner or tenderer found guilty of influence peddling, conflict of interest, insider trading, fraud, corruption, fraudulent documentation in the tendering process, for a period of not more than 2 (two) years, without prejudice to the legal proceedings that may be introduced against them.

**Article 110:** If the cases cited in Article 102 above are linked to the award of contracts, they shall be referred to the Authority in charge of Public Contracts, at the behest of the Board Chair or the General manager of the public corporation, accompanied with supporting documents.

**Article 111:** (1) The chairpersons, members and secretaries of the tenders board shall receive session allowances, the amounts of which shall be determined by the Board of Directors, consistently with the maximum rate set by separate instruments.

(2) The chairpersons, members and rapporteurs of Sub-Committees for Evaluation of bids, at the end of the session and after submission of the evaluation report, shall receive a fixed allowance under the same conditions as those set out in (1) above.

**Article 112:** The amount of the session allowances of the chairperson and members of the Arbitration and Appeals Committee shall be set by a resolution of the Board of Directors.

**Article 113:** The operating expenses of the Tenders Board, Sub-Committees for Evaluation of bids, and the Arbitration and Appeals Committee shall be included in the budget of the public corporation concerned.

**Article 114:** (1) No one may chair more than 2 (two) Tenders Boards.

(2) No one may sit as a member on more than one Tenders Board set up within a public corporation.

(3) No member of a Tenders Board may take part in the activities of a Sub-Committee for Evaluation of bids set up by the said Board.

**Article 115:** (1) Each public corporation shall endow itself with an internal support body placed under the direct authority of the General Manager and tasked with assisting the latter in preparation, award, and execution of contracts.

(2) Pending the adoption of standard documents specific to contracts issued by public corporations, the standard bidding documents currently in force, such as standard Tender Files and General Conditions of Contract, shall remain applicable.

(3) The board may hire external experts in view of discharging its duties.

**Article 116:** (1) Procedures initiated before the entry into force of this decree shall be governed by the laws in force at the time of initiation.

(2) For a period of 6 (six) months, counting from the date of signing of this decree, consultations launched by public corporations shall continue to be governed by the Public Contracts Code, until the adoption of the resolution and establishment of the new Boards provided for in the provisions of Article 119 of Law No. 2017/011 of 12 July 2017 on the General Statutes of State-owned corporations.

**Article 117:** In consideration of the specificities of each public corporation, a resolution of the Board of Directors shall specify the rules applicable to the award and control of the execution of specific contracts of the public corporation concerned.

**Article 118:** The terms for the enforcement of this decree shall, where necessary, be set out in separate instruments.

**Article 119:** This decree shall be registered and published according to the emergency procedure and inserted in the Official Gazette in English and French.

Yaounde, 12 June 2018

**The President of the Republic,**

**PAUL BIYA**